

STATE OF MICHIGAN  
COURT OF APPEALS

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APRIL BROWN,

Plaintiff-Appellee,

v

HARLAN PEARCE BROWN,

Defendant-Appellant.

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UNPUBLISHED

June 22, 1999

No. 201779

Wayne Circuit Court

LC Nos. 95-568517 DP

95-568518 DP

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right two orders of filiation and orders for support with regard to three children born to plaintiff. We affirm.

Defendant first argues that the trial court abused its discretion when it denied him an opportunity to review plaintiff's Department of Social Services (DSS) file. Paternity proceedings are civil in nature and are governed by the rules applicable to other civil actions except as modified by MCR 3.212 and the Paternity Act, MCL 722.711 *et seq.*; MSA 25.491 *et seq.* Parties in civil proceedings may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. *Larrabee v Sachs*, 201 Mich App 107, 108-109; 506 NW2d 2 (1993).

Defendant contends that the DSS file was relevant because it would likely contain evidence that plaintiff had sexual relations with other men on or about the time of the births or allowable gestation periods of the children. See, e.g., *Hoffman v Campbell*, 129 Mich App 114, 118; 341 NW2d 246 (1983) (sexual acts around the time of conception are relevant in a paternity case). However, defendant's argument was based upon pure speculation regarding the contents of the file,<sup>1</sup> and defendant presented no evidence to support his assertion that the file contained evidence relevant to the issue of paternity. Under these circumstances, we cannot conclude that the trial court abused its discretion in denying discovery of the DSS file. *Eyde v Eyde*, 172 Mich App 49, 54; 431 NW2d 459 (1988).

Defendant next argues that the trial court abused its discretion by denying defendant's motion for a continuance. A motion for a continuance must be based on good cause and granted to promote

the cause of justice. Here, after the trial court granted defendant's first motion for a continuance on October 23, 1996, the court instructed defendant to obtain new counsel. Defendant, who was aware of the blood test results indicating a greater than ninety-nine percent probability that he fathered the children, waited until one or two days before the December 18, 1996, trial to obtain counsel. There is no evidence to suggest that defendant's delay in obtaining counsel was due to anything but his own negligence. Under these circumstances, the trial court did not abuse its discretion by denying defendant's motion. *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991).

Defendant also argues that the prosecutor's argument that defendant did not present an opposing blood test or expert to rebut similar evidence presented by the prosecutor denied him a fair trial. We disagree. The paternity act presumes paternity where blood tests indicate the probability of paternity at ninety-nine percent or greater. MCL 722.716(5); MSA 25.496(5). Once paternity is presumed, the burden of proof is upon the alleged father to rebut the presumption. MCL 722.716(5); MSA 25.496(5). The prosecutor's argument merely informed the jury of defendant's burden and highlighted the fact that defendant did not meet his burden.

Last, defendant argues that the trial court trial improperly admitted DNA evidence without the establishment of a proper foundation for admissibility of the evidence. We disagree. The foundation requirements for blood test results is waived if an objection to the result or report is not made within fourteen calendar days after service on the mother and alleged father. MCL 722.716(4); MSA 25.496(4). The blood test results were received by the court and mailed to the parties on June 18, 1996. On August 7, 1996, a final pretrial conference was held and a trial was set for October 23, 1996. Clearly, defendant was allotted the required amount of time to object to the admissibility of the blood test results but failed to do so. Therefore, the trial court was statutorily required to admit the blood test results and the written report without requiring foundation testimony or other proof of authenticity or accuracy.

Affirmed.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

<sup>1</sup> The file is not contained in the record.